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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1991

Addendum

BURUNDI

[23 October 1991]

INITIAL REPORT OF THE REPUBLIC OF BURUNDI

INTRODUCTION

1. This report which Burundi has the honour to submit to the Human Rights Committee is in two main parts. The first part concerns existing measures in Burundi which relate to the provisions of the International Covenant on Civil and Political Rights. These measures directly give effect to the rights recognized in the Covenant. The second part deals principally with progress made and the current situation regarding the enjoyment of human rights in Burundi.

2. A list of a number of conventions which will be ratified shortly by the President of the Republic, after consideration by the Council of Ministers, is to be found at the end of the report.

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PART ONE: MEASURES ADOPTED

Article 2

3. Burundi respects and ensures to all individuals within its territory and subject to its jurisdiction the rights recognized in the International Covenant on Civil and Political Rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It regularly takes steps to adopt such legislative or regulatory measures as may be necessary to give effect to civil and political rights.

4. In Burundi, any person whose rights or freedoms as recognized in the Covenant are violated has an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. The Penal Code of Burundi makes violations of the freedom of the person punishable (arts. 171 and 172) and provides penalties for violations of the rights guaranteed to individuals (arts. 391 and 392, book II).

5. The Government of Burundi ensures that any person claiming a remedy has his right thereto determined by competent judicial, administrative or other authorities.

6. The Code of Organization and Powers of the Judiciary determines all the jurisdictional rules which must be applied having regard to the nature of the claim. It ensures that the competent authorities enforce such remedies when granted.

7. The Government Procurator's Office oversees the enforcement of laws, decrees, edicts, orders, ordinances, regulations and judgements. It seeks such enforcement of its own motion under the rules concerning public policy (Code of Penal Procedure, art. 14, organization of justice).

Article 3

8. Burundi ensures the equal right of men and women to the enjoyment of all civil and political rights. The Charter of National Unity states that "all persons are born and remain equal in dignity and in rights".

Article 4

9. The disturbances which occurred at Ntega and Marangara in August 1988 were the only public emergency to have nearly threatened the life of the nation. Burundi took measures as required by the exigencies of the situation and consistent with its other obligations under international law. The measures taken during the events at Ntega and Marangara succeeded in preventing an escalation of the violence and confirmed the determination of the Third Republic to consolidate national unity.

10. The judicial authorities did not carry out large-scale arrests, or summary executions, the aim being to distinguish truth from falsehood and to determine responsibility. To ensure transparency, the Government within hours informed all the diplomatic community and journalists of different viewpoints, allowing them to visit the scene of the events.

Article 6

11. Every human being has the inherent right to life. The Charter of National Unity emphasizes that human life is sacred. No one has the right to endanger human life for any reason whatsoever. While the death penalty has not yet been abolished, no sentence of death has been imposed or carried out under the Third Republic.

12. Decree-law No. 1/6 of 4 April 1981, concerning reform of the Penal Code, provides for acts of clemency with regard to prisoners and perpetrators of some offences, chapter VII dealing with amnesty (arts. 123-128) and chapter VIII with pardon (arts. 129-131).

Article 7

13. As regards torture or cruel, inhuman or degrading treatment or punishment, articles 146 to 150 of the Penal Code of Burundi make it a punishable offence for anyone to subject a person to deliberate bodily injury and article 171, paragraph 4, provides for punishment of physical torture.

Article 8

14. With respect to slavery, article 172 of the Penal Code provides for the imposition of penalties against anyone who abducts or causes to be abducted, arrests or causes to be arrested, detains or causes to be detained any persons with a view to selling them as slaves or who disposes of persons placed under his authority for the same purpose.

15. The Forced Labour Convention (No. 29) of 28 June 1930 is applicable in Burundi. By a letter of 1 March 1963 addressed to the Director-General of the International Labour Office, Burundi confirmed the ratification made by Belgium, which had approved the Convention by the Royal Decree of 20 May 1943.

Article 9

16. In Burundi, everyone has the right to liberty and security of person. The Constitution suspended on 3 September 1987, which serves as a general principle of law today, stated in its article 12 that "the liberty of the human person is inviolable". No one may be charged, arrested or detained except in cases covered by legislation enacted prior to the offence for which it provides punishment.

17. No one may be subjected to arbitrary arrest or detention. The above-cited articles 171 (1) and 392, book II, of the Penal Code are applicable. The Charter of National Unity indicates that no one may with impunity endanger the lives of others for any reason whatsoever.

18. Anyone who is arrested is always informed, at the time of his arrest, of the reasons for his arrest in a warrant. Anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power and must be tried within a reasonable time or released.

19. Matters relating to pre-trial detention and release on bail are dealt with in chapter III of the Code of Penal Procedure (arts. 27 to 47).

20. The suspended Constitution recognized the right to a defence before all courts and in proceedings at all levels.

Article 10

21. All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. The dignity of the human person is, indeed, one of the sacred values of Burundian society. These values are:

Respect for human life;

Dignity of the human person;

Respect for the common good.

22. Under the penitentiary system in Burundi, accused persons are segregated from convicted persons, juveniles from adults and women from men. The essential aim is the reformation and social reintegration of convicted persons. Measures for their rehabilitation are also provided for in the Penal Code (chap. IX, arts. 132-140).

Article 11

23. No one may be imprisoned merely on the ground of inability to fulfil a contractual obligation. No one is required to perform the impossible.

24. Under article 45, book III, of the Civil Code, a debtor may be ordered where appropriate to pay damages either for non-fulfilment or for late fulfilment of an obligation and whenever he is unable to prove that non-fulfilment is due to circumstances for which he cannot be held responsible, notwithstanding that there has been no bad faith on his part.

Article 12

25. Everyone within the territory of Burundi has the right to liberty of movement and freedom to choose his residence. Article 15 of the Constitution stipulated that all Burundians have the right to travel and settle freely anywhere within the Republic subject to the restrictions provided by law.

26. Everyone is free to leave any country, including his own. The law on the immigration and residence of aliens in Burundi and the law on the emigration and return of Burundians are clear and explain in detail the conditions and terms of this liberty.

27. No one may be arbitrarily deprived of the right to enter his own country. Burundi has even launched an urgent appeal to all refugees wishing to return. A commission has been set up to receive and promote the reintegration of refugees: more than 15,000 persons have already returned.

Article 13

28. With regard to aliens, the law on the immigration and residence of aliens determines the conditions of admission and sojourn, as well as the conditions for expulsion.

Article 14

29. The equality of all persons before the courts and tribunals is respected in Burundi. It is enshrined in the Charter of National Unity. This signifies that all persons are equal before the law and have the right to equal protection of the law without distinction.

30. Court hearings are public except for cases heard in camera by judicial decision when publicity is dangerous for public order or morals.

31. Anyone charged with a criminal offence is presumed innocent until proved guilty according to law. No offence may be subject to penalties not provided for by law before the offence was committed (Penal Code, art. 2, book I).

32. Indeed, all guarantees referred to in article 14 of the Covenant are provided for in our Code of Penal Procedure, notably in chapter IV concerning interpreters, translators, experts and doctors; chapter V concerning trial court procedure; chapter VI concerning objections and appeals; and chapter VII concerning the execution of judgements.

Article 15

33. As already indicated, the Penal Code of Burundi states that no offence may be subject to penalties not provided for by law before the offence was committed. Furthermore, no heavier penalty is imposed than the one that was applicable at the time when the offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender must benefit thereby.

Article 16

34. Everyone has the right to recognition everywhere as a person before the law. Every individual enjoys the full range of civil rights. Everyone is afforded protection of his person and property (Code of the Person and the Family).

Article 17

35. The Penal Code of Burundi, particularly in articles 173 to 183, provides for the punishment of interference with the home or correspondence, the disclosure of professional secrets and defamation or injurious behaviour.

Article 18

36. The Charter of National Unity recognizes that every Burundian has the right to enjoy all public and individual freedoms. Every Burundian has the right to freedom of movement throughout the territory of Burundi, to join the association or adopt the religion of his choice and to fulfil himself completely while respecting the law. Freedom of expression is guaranteed to every citizen.

Article 20

37. Under the Charter of National Unity, oral or written advocacy of division and hatred between Burundians is prohibited throughout the national territory.

Article 21

38. The right of peaceful assembly is recognized by the Act of 31 January 1959 governing demonstrations in public places and public meetings. The right to assemble and to form associations is guaranteed in forms and under conditions determined by law.

Article 22

[See under article 18 above]

Article 23

39. In Burundi, the family, as the natural basis of society, is protected by law. Marriage is governed by the law. The Code of the Person and the Family specifies registration under civil law.

Article 24

40. Burundi has ratified and accepted the Convention on the Rights of the Child.

Article 25

41. The Charter of National Unity establishes that every citizen has the right to take part in the conduct of State affairs. No one may prevent a citizen from doing so and every citizen is required to carry out his civic duties with full responsibility. Every Burundian has the right to take part in political contests, accepting in fairness that the best man should win.

Article 26

42. The Charter of National Unity states that national law must guarantee to every citizen the enjoyment of all his rights regardless of any social consideration. Every citizen must be afforded protection of his person, family and property.

Article 27

43. The principle of the protection of minorities is recognized as being fundamental to democracy. Indeed, democracy is a form of government which assures the protection of all, including such ethnic, religious, linguistic or other minorities as may exist in society. One purpose of the elaboration of the Charter of National Unity was to ensure that no one should be excluded from political, economic and social life on ethnic, religious, linguistic or other grounds.

PART TWO: PROGRESS MADE

44. Burundi became an independent country on 1 July 1962. At that time, it was under a monarchical regime and encountered serious difficulties despite the existence of democratically structured institutions. This accounts for the many pitfalls to which the actors on the national political scene of that period succumbed:

Non-compliance with the requirements of the law;

Political instability;

Intolerance;

Violence (1965) instead of the settlement of conflicts by peaceful means.

45. These problems led to a coup d'état on 28 November 1966, which established the republican regime. The First Republic lasted from 28 November 1966 to 1 November 1976.

46. As regards human rights, it should be noted that the First Republic was marked by serious disturbances which recurred at close intervals in 1969, 1971, 1972 and 1973. These events, punctuated by judgements handed down by courts of special jurisdiction, endangered respect of the human person and of his freedoms and rights. Power was subverted by ethnic and regional divisions and other aberrations such as nepotism and corruption. In this situation another coup d'état was held on 1 November 1976 to establish the Second Republic, which lasted until September 1987. On its proclamation, the Constitution of 1974 was suspended; the new Constitution was promulgated in November 1981.

47. At the beginning of this regime, the public authorities endeavoured to restore social peace and justice, in particular by involving all Burundians, without distinction on ethnic or regional grounds, in the conduct of public affairs, by abolishing the institution of Ubugererwa and by reintegrating Burundian refugees, who had been called on to return to their country.

48. Human rights were proclaimed by the new Constitution but were not respected. Freedom of expression gave way to the practice of silence. A climate of mistrust developed and practices of exclusion on ethnic, regional and other grounds became common. The conflict between Church and State took on considerable proportions, particularly as a result of obstacles to freedom

of worship. The regime became authoritarian and failed to respect or secure respect for human rights and fundamental freedoms. In the context of all these difficulties, a further military coup d'état took place on 3 September 1987 which established the current regime.

CURRENT SITUATION IN BURUNDI REGARDING HUMAN RIGHTS

49. The main concerns of the Third Republic are:

To restore public confidence;

To improve the management of the State;

To ensure better protection of human rights.

50. After the events at Ntega and Marangara (August 1988), the new leaders intensified efforts for the protection of human rights. The important issue of national unity, long a taboo subject, was opened up for nationwide debate and analysed without equivocation or prevarication in all quarters in meetings, symposia and other forums.

A. Charter of National Unity

51. The elaboration and adoption of the Charter of National Unity by referendum on 5 February 1991 represents the continuation and one of the outcomes of the vast process of popular consultation launched by the Third Republic. Its adoption by an 89 per cent majority shows the firm determination of the people of Burundi henceforward to build an always united nation, a peaceful, prosperous and safe country for all its sons and daughters - a State which respects the rights and fundamental freedoms of the individual. This Charter is a form of covenant by which the people of Burundi have bound themselves to consolidate their unity once and for all.

52. The Charter of National Unity contains the proclamation of solemn faith and commitment of all Burundians to justice, peace and democracy. It determines, inter alia, the duties and responsibilities of each citizen with regard to unity and proclaims the rights of the citizen, in particular the security and equality of all. It traces out a framework and an ideal, a code of conduct and a guide for life to inspire all action, social as well as political, to ensure lasting national cohesion.

53. The bitter experience of the past has strengthened the conviction of the people of Burundi that division is a blind alley and can lead only to destruction. For that reason, they have unreservedly condemned divisions of all kinds, both those which previously brought the country to the edge of the abyss, such as ethnic differences, regionalism and clannishness, and all other aberrations capable of breaking up the Burundian nation. For that reason, too, the people of Burundi have resolved to achieve mutual reconciliation and to ban all divisionist ideologies and rigorously respect the ethic of national unity.

Respect for freedoms and human rights

54. The principle of respect for individual freedoms and human rights is affirmed and has now already been applied in practice, as evidenced notably by:

The normalization of relations between Church and State;

The ratification of a number of international conventions and agreements, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees;

Government approval of independent associations for the protection and promotion of human rights;

The establishment of a disciplinary board to investigate any abuses committed by members of the police force;

The implementation of a policy of voluntary repatriation, resettlement and social and occupational reintegration of Burundian refugees.

B. Democracy

55. A Constitutional Commission, composed of figures from all spheres of national life, including the university, the magistrature, the bar, public and para-public administration, the party and related movements, the armed forces, the private sector, religious denominations and various associations, was set up on 21 March 1991. The Commission has already published its report, which is now the subject of extensive national debate prior to the drafting and adoption by referendum of a new Constitution of the Republic of Burundi. This report is the outcome of an in-depth analysis of all issues concerning the democratization of institutions and political life in Burundi.

56. The movement in favour of democracy has found Burundi already committed to political change through:

A questioning of the old ways of running the State;

The promotion and protection of human rights;

The growth of associations;

The striving for greater public participation in national and local affairs.

1. Democratization of institutions

57. The regime of the Third Republic is convinced that the democratization of institutions is possible only in a healthy political climate. It is imperative for Burundi to foster among its people a climate of confidence and security without which no policy of democratization can be effective.

2. Value of society

58. For Burundi, democracy is founded on values which are inviolable and which democratic institutions must guarantee and respect from the outset if they are not to reject what they stand for. As such, these values are closely associated with human rights in that they place man at the centre of institutions, as their primary reference. These values are:

Respect for life;

The dignity of the human person;

The common good.

The right to life, of course, is a right without which the other rights would not even exist.

Dignity of the human person

59. When man is placed under inhuman or degrading conditions of life or becomes an object of exploitation and no longer a responsible subject, his status as a person is denied. The Government of Burundi endeavours to provide the human person with conditions for self-realization that are consistent with his dignity as a being endowed with reason, will and liberty.

Respect for the common good

60. For each member of society, the common good is both a right and a duty, and has to be respected in this dual sense. The right implies that society must enable all its members to enjoy the benefits of the common good. The duty implies that each member of the community must subordinate his particular good to the common good.

61. In addition to these sacred and inviolable values, there are certain other fundamental values. These are national unity, social peace, social justice, development and national independence and sovereignty.

62. As already indicated, Burundi was marked by divisions of all kinds and became sensitive to the issue of national unity. Accordingly, the Charter of National Unity enshrined this value as a fundamental one. For without national unity, peace, tranquillity and stability are impossible. Democracy is then inconceivable. In a country such as ours where there is poverty, the institutions in place are concerned to build a just society founded on solidarity, the participation of all in development and the equitable distribution of wealth.

3. Traditional social and cultural values associated with democracy

63. In searching our traditional society for values to guide us in the endeavour to democratize institutions, we retained the following values: devotion to truth, social solidarity, the sense of responsibility, respect for others and oneself, patriotism and the concern for self-reliance.

Devotion to truth

64. In Burundi we have an institution called Ubushingantahe which with rare felicity combines moral uprightness, legal perspicacity and the sense of conciliation. One of its characteristics is devotion to truth at all costs. The aim now is to rehabilitate this institution.

Solidarity

65. Experience has already shown that no one can be sufficient unto himself and that every individual must rely on others just as others must rely on him.

Sense of responsibility

66. Burundian tradition attaches particular importance to respect for the covenant, pledge or promise. This, in a word, implies a sense of responsibility assumed with discretion and faithfulness to ethical rules. Nowadays, when the tendency is to attach a price to everything, the present regime is seeking to promote this value characterized by earnestness and the sense of duty and honour.

Respect for others and oneself

67. Respect for others has been cultivated in Burundian tradition. This is also a democratic virtue in that it permits mutual esteem even when everyone does not share the same ideas; it encourages the tolerance so characteristic of democracy.

Patriotism

68. Love of one's country is a value associated with the common good which has been fundamental to the building of the Burundian nation and the recovery of its sovereignty. Commitment to and protection of one's country today, as in the past, represent a value which should mobilize the energies of all citizens.

The concern for self-reliance

69. The value we aim to encourage is that of seeking to resolve our own problems first, before having recourse to the outside world. This concern will develop the sense of national sovereignty and also the sense of responsibility in the management of the country's affairs.

C. Repatriation of refugees

70. The various disturbances which erupted in our country caused a large outflow of people seeking asylum in neighbouring countries (Africa) or even further afield (Europe, America, etc). The Government has been concerned to encourage the voluntary repatriation of all citizens who left the country, fearing violence. In cooperation with neighbouring countries and international organizations, the Government was able to organize the large-scale and voluntary return of these people.

71. As regards the refugees of August 1988 (Ntega and Marangara), they have all returned voluntarily and resettled with their families on their original lands. The Government has consistently urged other refugees wishing to do so to return to the country. For that purpose it set up a commission for the reception, return and social and occupational reintegration of refugees. More than 15,000 refugees have already responded to the Government's appeal. These efforts are proof of the Third Republic's commitment to preserving national unity and its desire to bring about national reconciliation.

STATUS OF ACCESSION BY BURUNDI TO THE HUMAN RIGHTS CONVENTIONS

72. In addition to the agreements already approved and ratified by Burundi, the following conventions will be ratified by the Government before the end of this year as they have already been placed on the agenda of the Council of Ministers:

(a) Convention on the Prevention and Punishment of the Crime of Genocide, adopted in New York on 9 December 1948;

(b) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted in New York on 26 November 1968;

(c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984;

(d) International Convention against Apartheid in Sports, adopted on 10 December 1985;

(e) Convention against Discrimination in Education, adopted at Paris by the General Conference of UNESCO on 14 December 1960;

(f) Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education, adopted at Paris by the General Conference of UNESCO on 10 December 1962;

(g) International Convention against the Taking of Hostages, adopted in New York by the General Assembly of the United Nations on 17 December 1979.